

IN THE SUPERIOR COURT OF COBB COUNTY

COBB COUNTY, GA  
FILED IN OFFICE

2014 SEP -3 PM 4: 02

STATE OF GEORGIA

STATE OF GEORGIA

VS.

JUAN ENRIQUE PEREZ,

Defendant

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\*  
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CASE NO.: 14 - 9 - 1981

[ Poole ]

*Debra Heston*  
COBB COUNTY CLERK

**ORDER**

This case is before the Court on Defendant's Demurrer and Motion to Quash Indictment. The Court conducted an evidentiary hearing on September 2, 2014, and, having reviewed the evidence, argument of counsel, and relevant authority, finds as follows:

1.

In the above-styled indictment, Defendant is charged with [count 1] Aggravated Sodomy, [count 2] Aggravated Sodomy, and [count 3] Child Molestation. Defendant filed a demurrer and motion to quash indictment on the grounds that counts 1 and 2 fail to sufficiently charge Defendant with the offense of aggravated sodomy.

2.

Subsequently, the State attempted to cure the defective error and presented a new indictment to the Cobb County grand jury alleging the same conduct as in the instant case; however, charging Defendant with two counts of child molestation instead of aggravated sodomy. (case number 14-9-3034). The grand jury returned a no bill of indictment in case number 14-9-3034 which was filed with the Cobb County Superior Court Clerk on August 29, 2014.

3.

This Court finds that counts 1 and 2 in the instant case fail to sufficiently charge Defendant with the offense of Aggravated Sodomy. Specifically, counts 1 and 2 fail to allege that Defendant performed or submitted to any sexual act involving the sex organs of one person and the mouth or anus of another.

4.

Under Georgia law, “the true test of the sufficiency of an indictment to withstand a general demurrer, or a motion to quash, is found in the answer to the question: Can the defendant admit the charge as made and still be innocent? If he can, the indictment is fatally defective” Jenkins v. State, 121 Ga.App. 103 (1970).

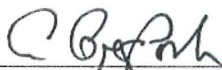
5.

Defendant can admit to the charges *as made* in counts 1 and 2 and still be innocent of the offenses of Aggravated Sodomy, O.C.G.A. § 16-6-2(a)(2). Therefore, the indictment cannot withstand a general demurrer and is fatally defective.

6.

This Court hereby GRANTS Defendant’s demurrer and motion to quash indictment.


SO ORDERED, this 2 day of Sept, 2014.

  
\_\_\_\_\_  
A. GREGORY POOLE, JUDGE  
Superior Court of Cobb County

Prepared by:

  
\_\_\_\_\_  
Carlos J. Rodriguez  
Counsel for Defendant

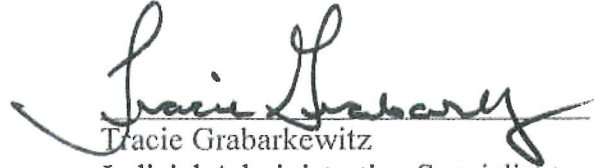
Consented to form by:

  
\_\_\_\_\_  
Lindsay Gardner  
Cobb County District Attorney’s Office

CERTIFICATE OF SERVICE

This is to certify that I have this day served the parties in the foregoing matter with a copy of the attached ORDER by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 3<sup>rd</sup> day of September, 2014.



Tracie Grabarkewitz  
Judicial Administrative Specialist to:  
A. Gregory Poole  
Judge, Superior Court  
Cobb Judicial Circuit

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